

2011 DRAFTING REQUEST

Bill

Received: 03/30/2011

Received By: agary

Wanted: As time permits

Companion to LRB: -3308

For: Andre Jacque (608) 266-9870

By/Representing: self

May Contact:

Drafter: agary

Subject: Beverages

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Jacque@legis.wi.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Private right of action for underage alcohol violations

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	agary 04/05/2011	edt_sbasford 04/15/2011	rschluet 04/15/2011	_____	mbarman 04/15/2011		
/2	agary 10/21/2011	csicilia 10/21/2011	jfrantze 10/21/2011	_____	mbarman 10/21/2011	ggodwin 12/29/2011	

FE Sent For:

None

<END>

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/?	agary	15 BB & js 4/7	 4/15/11	_____	_____		

FE Sent For:

<END>

Gary, Aaron

From: André Jacque [andre.jacque@gmail.com]
Sent: Wednesday, March 30, 2011 4:00 PM
To: Gary, Aaron
Subject: Drafting Request - Email 2 of 2
Attachments: ole0.bmp
Suggested draft language...

----- Forwarded message -----

From: **Andre Jacque** <AndreJa@ci.green-bay.wi.us>
Date: Thu, Dec 9, 2010 at 2:44 PM
Subject: FW: Kails legal opinion on the brown Jug model
To: Andre Jacque <andre.jacque@gmail.com>

From: Bill Bongle
Sent: Thursday, December 09, 2010 11:42 AM
To: Andre Jacque
Subject: Kails legal opinion on the brown Jug model

Here would be an example statute for Wisconsin, modeled after the Alaska statute and reconfigured to fit WI law:

125.073 – Civil Penalty for Violations of s. 125.07(4)(a)

(a) A person who has attained 18 years of age, or an emancipated minor, who violates s. 125.07(4)(a) is, in addition to any criminal or civil penalties imposed by statute or ordinance, liable in a civil action for a penalty of \$1,500 plus costs and reasonable attorney fees to the licensee upon whose premises the person violated s. 125.07(4)(a).

(b) The person having legal custody of an unemancipated minor who violates s. 125.07(4)(a) is, in addition to criminal or civil penalties imposed by statute or ordinance, liable in a civil action for a penalty of \$1,500, plus costs and reasonable attorney fees, to the licensee upon whose premises the unemancipated minor violated s. 125.07(4)(a).

(c) It is a condition precedent to maintaining an action under this section that the owner or seller of the merchandise send by first class mail to the defendant at the defendant's last known address 15 days or more before the action is commenced a notice demanding the relief authorized. The department may adopt regulations prescribing the form of this notice. It is not a condition precedent to maintaining an action under this section that the person who violates

3/30/2011

s. 125.07(4)(a) was charged or convicted under any statute or ordinance.

(d) "Emancipated minor" has the meaning given in s. 48.375(2)(e).

This is a rough draft which I propose would be numbered 125.073.

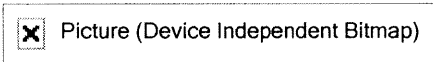
Kail Decker

Assistant City Attorney

Bill Bongle
Lieutenant of Community Policing
Green Bay Police Department
307 S. Adams Street
Green Bay, WI 54301

Phone 920-448-3215

*Have you received excellent customer service from a member of the Green Bay Police Department?
Why not nominate them for a **WOW! Award** at www.gbpolice.org*



Gary, Aaron

From: André Jacques [andre.jacque@gmail.com]
Sent: Wednesday, March 30, 2011 3:59 PM
To: Gary, Aaron
Cc: Rep.Jacque
Subject: Drafting Request- Email 1 of 2
Attachments: Brown Jug article.pdf; SBIR Phase 3 prospectus 12-15-09.doc; Waltham model 5-23-09.doc; WI RR Program prospectus with edits 8-13-2010.pdf

Hi Aaron,

This should provide a little more background information on what I was talking about. Please feel free to call me direct at 920-819-8066 with questions.

Thanks!
Andre

----- Forwarded message -----

From: Andre Jacques <AndreJa@ci.green-bay.wi.us>
Date: Thu, Dec 9, 2010 at 2:44 PM
Subject: FW: Alcohol initiatives
To: Andre Jacques <andre.jacque@gmail.com>

From: Bill Bongle
Sent: Wednesday, December 08, 2010 7:01 PM
To: Andre Jacques
Subject: Alcohol initiatives

<<Brown Jug article.pdf>> <<SBIR Phase 3 prospectus 12-15-09.doc>> <<Waltham model 5-23-09.doc>> <<WI RR Program prospectus with edits 8-13-2010.pdf>> <<RE: Brown Jug model>>

Here is some of the documentation regarding what we talked about earlier.

Thanks Andre,

Bill

----- Forwarded message -----

From: "Kail Decker" <KailDe@ci.green-bay.wi.us>
To: "Bill Bongle" <BillBo@ci.green-bay.wi.us>
Date: Fri, 29 Oct 2010 15:55:33 -0600
Subject: RE: Brown Jug model

Bill,

3/30/2011

*not helpful -
not printed out
for file*

Here is what I have found so far:

WALTHAM MODEL

The Waltham model works with licensees only so I am only looking at violations of 125.07(4)(a) and not (4)(b). The \$300 non-court action developed in Waltham is not on the books now, but state law is already in place setting a first-offense fine of \$250-\$500 (\$366-\$681 after costs) for any 17- to 20-year old person convicted of:

1. Procuring or attempting to procure alcohol from licensee
2. Possessing or consuming alcohol on licensed premises
3. Entering a licensed premises
4. Falsely representing age to licensee in an attempt to receive alcohol

The fines go up for each subsequent offense:

2nd: \$300-\$500 (\$429-\$681)

3rd: \$500-\$750 (\$681-\$750)

4th +: \$750-\$1000 (\$996-\$1,306)

If we chose to go with this model, the city could switch from citing the minimums (as it does now) and instead cite the maximums so there is more money to play with. The funding ability is already in place because the city could get at least \$500 to use for each ticket issued. The issue is how to re-direct that funding as part of the clerk reward... I am still looking at how the city could do that.

BROWN JUG MODEL

There would need to be a state law amendment to give retailers a cause of action against underage persons. The Alaska law (§ 04.16.065) is very simple, straightforward, and would be easy to reproduce under Wisconsin law... The question is whether the state legislature would approve such a change. It's interesting to note that Alaska recently increased the \$1,000 liability to \$1,500, effective September 14, 2010, so there is no sign that Alaska is backing down from their initial theory.

Have a good weekend. We'll pick this up again next week.

-Kail

3/30/2011

Kail Decker

Assistant City Attorney

From: Brad Krevor [mailto:krevor@rrforum.org]
Sent: Thursday, October 21, 2010 9:03 AM
To: Bill Bongle; Kail Decker
Cc: Steve Champeon
Subject: Brown Jug model

Good morning, gentlemen.

Have you given any more thought about how Green Bay might adapt the Brown Jug Alaska model? RRF, as you know, is as intrigued by the potential impact of a "retailer incentive" as the retailers themselves and we would be pleased to work with you to administer (if necessary) and certainly to evaluate any program that might emerge. If I can be of any assistance as you consider a Green Bay-appropriate approach, just let me know some times you might both be available to talk. Also, I've CC'ed Steve Champeon, the Waltham, MA PD lieutenant who had drafted an approach for Waltham (Steve is also an attorney) that has been stymied by his own city law department. Steve, I know, would be happy to share his thoughts and experiences with you.

Bill, any contact with Triangle Distributing?

Regards:

Brad

--

Brad S. Krevor, Ph.D.

President, Responsible Retailing Forum

681 Main Street Suite 325

Waltham, MA 02451-0621

www.rrforum.org

3/30/2011



in
4/5



2011 BILL

Gen Cat

1 AN ACT **relating to:** alcohol beverages violations by underage persons on
2 licensed premises.

Analysis by the Legislative Reference Bureau

Under current law, with limited exceptions, a person who has not attained the legal drinking age of 21 years may not: 1) procure or attempt to procure alcohol beverages from an alcohol beverages licensee or permittee; 2) possess or consume alcohol beverages on premises for which an alcohol beverages license has been issued (licensed premises), unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age; 3) enter, knowingly attempt to enter, or be on licensed premises unless authorized by statute to do so; or 4) falsely represent his or her age for the purpose of receiving alcohol beverages from an alcohol beverages licensee or permittee (underage violation). A person who commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

This bill provides alcohol beverages licensees with a private right of action against persons who engage in conduct that constitutes an underage violation. Under the bill, a licensee may bring a civil action against such an underage person and, if judgment is entered in favor of the licensee, the court must award to the licensee damages in the amount of \$1,500, plus costs and reasonable attorney fees. However, if the underage person is less than 18 years of age and not emancipated, the licensee brings the action against the parent or legal guardian of the underage person instead. The licensee has the burden of proving that the underage person's

BILL

conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the violation. Before a licensee may bring an action, the licensee must provide notice of its intent to bring an action and the notice must include a demand for the monetary relief that would be available if the action were brought.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

~~X~~
1 **SECTION 1.** 125.07 (4) (f) of the statutes is created to read:

2 125.07 **(4)** (f) 1. Except as provided in subd. 2., and subject to subd. 3., if an
3 underage person engages in conduct that violates par. (a) on the premises of a
4 licensee, the licensee may bring a civil action against the underage person. If
5 judgment is entered in favor of the licensee, the court shall award to the licensee
6 damages in the amount of \$1,500 and, notwithstanding s. 814.04 (1), the costs of the
7 action, including reasonable attorney fees. A licensee may bring an action under this
8 paragraph regardless of whether the underage person has been convicted of, or
9 received a citation for, the violation of par. (a), but the licensee has the burden of
10 proving, by a preponderance of the evidence, that the underage person's conduct was
11 in violation of par. (a).

12 2. If the underage person who engages in conduct that violates par. (a) on the
13 licensee's premises is less than 18 years of age and is not an emancipated minor, as
14 defined in s. 48.375 (2) (e), the licensee may bring the civil action against the
15 underage person's parent, as defined in s. 46.56 (1) (j).

16 3. A licensee may not bring a civil action under this paragraph unless the
17 licensee has first provided notice to the underage person or the underage person's
18 parent, as applicable, of the licensee's intent to bring the action. The notice shall be
19 mailed to the last-known address of the underage person or underage person's

BILL

1 parent, as applicable, at least 15 days prior to filing the action and shall include a
2 demand for the relief described in subd. 1. The department may, by rule, prescribe
3 a form for this notice.

4 **SECTION 2. Initial applicability.**

5 (1) This act first applies to violations of section 125.07 (4) (a) of the statutes
6 committed on the effective date of this subsection.

7 (END)

Gary, Aaron

From: Jacque, Andre
Sent: Thursday, October 20, 2011 4:32 PM
To: Gary, Aaron
Subject: Draft revision- LRB 1803

Hi Aaron,
Could you please update LRB 1803 for me, changing the reference of \$1500 to \$1000?
Thanks!
André



State of Wisconsin
2011 - 2012 LEGISLATURE

in
10/21



LRB-1803/4 2

ARG:sbb&cjs:rs

2011 BILL

wanted
by 10/24

RMR

stays

Gen Cat

- 1 AN ACT *to create* 125.07 (4) (f) of the statutes; **relating to:** alcohol beverages
- 2 violations by underage persons on licensed premises.

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Under current law, with limited exceptions, a person who has not attained the legal drinking age of 21 years may not: 1) procure or attempt to procure alcohol beverages from an alcohol beverages licensee or permittee; 2) possess or consume alcohol beverages on premises for which an alcohol beverages license has been issued (licensed premises), unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age; 3) enter, knowingly attempt to enter, or be on licensed premises unless authorized by statute to do so; or 4) falsely represent his or her age for the purpose of receiving alcohol beverages from an alcohol beverages licensee or permittee (underage violation). A person who commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

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3 a form for this notice.

4 **SECTION 2. Initial applicability.**

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6 committed on the effective date of this subsection.

7 (END)

Parisi, Lori

From: Murphy, Michael
Sent: Thursday, December 29, 2011 10:06 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-1803/2 Topic: Private right of action for underage alcohol violations

Please Jacket LRB 11-1803/2 for the ASSEMBLY.